

**COMMITTEE ON LEGAL SERVICES**

Sen. Jennifer Veiga, Chair  
Rep. Jeanne Labuda, Vice Chair  
Rep. Bob Gardner  
Rep. Daniel Kagan  
Rep. Claire Levy  
Rep. Ellen Roberts  
Sen. Greg Brophy  
Sen. Shawn Mitchell  
Sen. John Morse  
Sen. Gail Schwartz

**OFFICE OF LEGISLATIVE LEGAL SERVICES  
COLORADO GENERAL ASSEMBLY**



STATE CAPITOL BUILDING, ROOM 091  
200 EAST COLFAX AVENUE  
DENVER, COLORADO 80203-1782

TELEPHONE: 303-866-2045

FACSIMILE: 303-866-4157

E-MAIL: olls.ga@state.co.us

**DIRECTOR**

Charles W. Pike

**DEPUTY DIRECTORS**

Dan L. Cartin  
Sharon L. Eubanks

**REVISOR OF**

**STATUTES**

Jennifer G. Gilroy

**SENIOR ATTORNEYS**

Gregg W. Fraser  
Deborah F. Haskins  
Bart W. Miller  
Julie A. Pelegri

**SENIOR STAFF**

**ATTORNEYS**

Jeremiah B. Barry  
Christine B. Chase  
Edward A. DeCecco  
Michael J. Dohr  
Kristen J. Forrestal  
Duane H. Gall  
Jason Gelender  
Robert S. Lackner  
Thomas Morris  
Nicole S. Myers  
Jery Payne

**SENIOR STAFF**

**ATTORNEY FOR**

**RULE REVIEW**

Charles Brackney

**SENIOR STAFF**

**ATTORNEY FOR**

**ANNOTATIONS**

Michele D. Brown

**STAFF ATTORNEYS**

Troy Bratton  
Brita Darling  
Kate Meyer  
Jane M. Ritter  
Richard Sweetman  
Esther van Mourik

**PUBLICATIONS**

**COORDINATOR**

Kathy Zambrano

**SUMMARY OF MEETING**

**COMMITTEE ON LEGAL SERVICES**

**April 17, 2009**

The Committee on Legal Services met on Friday, April 17, 2009, at 12:01 p.m. in SCR 352. The following members were present:

Senator Veiga, Chair  
Senator Brophy  
Senator Mitchell (present at 12:03 p.m.)  
Senator Morse  
Senator Schwartz  
Representative B. Gardner  
Representative Kagan  
Representative Labuda, Vice-chair  
Representative Levy  
Representative Roberts

Senator Veiga called the meeting to order.

Senator Veiga addressed agenda item 1 - Election of Vice-chair. She said with Representative McGihon resigning, we have a vacancy in the Vice-chair. She asked for nominations.

**12:02 p.m.**

Representative Kagan nominated Representative Labuda to serve as Vice-chair of the Committee. No objections were raised to that motion and it passed unanimously.

Charley Pike, Director, Office of Legislative Legal Services, addressed agenda item 2 - Legislative Policies Related to Public Records and E-Mail.

Mr. Pike said this is an issue that was originally brought to last year's leadership. We talked to them about the possibility of adopting some general policies with regard to open records procedures and retention of e-mails. That leadership was unable to get to that issue during the last session, but they had asked us to do some work on a draft of a policy. Coincidentally, last year this Committee had some conversations with us primarily as a result of some of our presentations to the Committee with regard to use of our resources and other resources, i.e., the attorney fees, that were being expended with regard to responding to open records requests and participating in legal actions revolving around open records requests. At that time, we indicated that we were expending many more resources than we have in the past. It seems to be escalating. In addition, over the last three years, we've expended in excess of \$200,000 for involving outside counsel in litigation on issues relating to open records. We have a draft of an e-mail policy that could be adopted by the legislature, which would be done by the Executive Committee, should they desire to do so. It doesn't require a resolution or a bill. It's simply a policy that would be adopted in accordance with the statute that directs that the custodian adopt a policy addressing open records and retention of e-mails. It's our view that the policy is in furtherance of that directive in statute and fleshes out areas where the custodian, as well as others who are trying to obtain open records, know exactly who to go to with regard to custodianship, etc. We have distributed the draft policy to the Committee and Dan Cartin is here and can go through a quick explanation of it should you desire or we can respond to questions should you desire. I think if you believe that the policy is appropriate, you can simply make a motion to direct us to take it to the next meeting of the Executive Committee or you can proceed to direct us to make further refinements in it, or whatever is your pleasure.

Representative Levy said I think we talked about the manner in which a submission would be made a little bit already. I have never been comfortable with an open records request submittal by e-mail, for all the reasons we've already talked about. It's hard to determine who it came from and when it was actually received. You've tried to address time of receipt in the policy, but it's so hard to pin down, particularly when the request can be submitted to both the member and the head of the staff agency. I didn't find that real clear here. I would like a little discussion here about why we want to allow an e-mail submittal for an open records request.

Representative Labuda said I had concerns about this when we discussed it previously. At home, I don't check my e-mails on a regular basis when we're in session. When we're out of session, nobody checks my office e-mails on a regular basis. My fear is that even if it comes to the office account and it's

proper, if nobody opens it until four months later because we're all on vacation or something, four months is an awfully long time.

Mr. Pike said I think the reason we included e-mail in the draft of the policy was because there are currently folks who do that. I have to tell you we have had the same experience. We've had situations where open records requests were directed to members and their e-mail box was full or they don't regularly attend to their own e-mails, and an assertion was made subsequently in a newspaper article and blog that this member did not respond to an open records request. The member never saw it because it was an e-mail, so I'm empathetic to your concern. Like I said, the reason it's in the draft is because there is currently a practice of doing that. I think it's appropriate, should you direct us to do so, that we take that out.

Senator Mitchell said I'm not sure if some "folks who do that" means to refer to there are custodians and policies that acknowledge and allow e-mail as the transmission of an open records request or you meant some "folks who do that" means send requests via e-mail. If the latter, what some people try to do does not necessarily suggest what is good policy. They could send open records requests by carrier pigeon, but the fact that someone does it doesn't comment on the wisdom or virtue of recognizing that as the norm.

Mr. Pike said yes, it's the latter. It seems to be much more prevalent recently. Frankly, if the Office responds to an open records request by e-mail, we also always send a copy of that by regular mail because we want to make sure that the parties receive the response.

**12:11 p.m.**

Representative Levy moved that the Committee direct staff to delete the reference to e-mail as a means of making a request and make the conforming amendments. The motion passed on an 8-2 vote, with Representative Kagan, Representative Labuda, Representative Levy, Representative Roberts, Senator Mitchell, Senator Morse, Senator Schwartz, and Senator Veiga voting yes and Representative Gardner and Senator Brophy voting no.

Representative Gardner said I think we had some extensive discussion in one of our last considerations of the policy about how we were going to set up practices for e-mail itself. We had some concern that the policy was a little too restrictive with respect to some incidental personal use of e-mail. I think Mr. Cartin made a change on that if he could review it for us. Dan Cartin, Deputy Director, Office of Legislative Legal Services, said I think the piece

Representative Gardner may be speaking about is on page 7, under B.1. I think that language about e-mail going to use for personal gain of a legislative staff person narrows the application down to staff. Those changes were made per that discussion.

Representative Gardner said because we have some new people on the Committee, I think the concern was that while some of us may use our own computer, we're connected to LegNet. The question really was if I'm using the LegNet for wireless connection and I make a communication for my law office purposes, have I then violated the policy? I think we've addressed that and fixed that so that incidental uses for your law practice or some other business would not violate the policy. Mr. Cartin said that's correct.

**12:14 p.m.**

Hearing no further discussion or testimony, Senator Morse moved to direct the staff to take the policy before the Executive Committee with the Committee's recommendations. The motion passed on a 9-0 vote, with Representative Gardner, Representative Kagan, Representative Labuda, Representative Levy, Senator Brophy, Senator Mitchell, Senator Morse, Senator Schwartz, and Senator Veiga voting yes.

**12:16 p.m.**

The Committee adjourned.